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MADELEINE SMITH'S TRIAL.[1]

Report of the Trial of Madeleine Smith before the High Court of Justiciary at Edinburgh, for the alleged Poisoning of Pierre Emile L'Angelier. By ALEXANDER FORBES IRVINE, Advocate. Edinburgh: T. & T. CLARK. London: STEVENS & NORTON, and SIMPKIN & Co., 1857.

About a twelvemonth since, we took occasion to advert to the then recent trial of William Palmer, at the Central Criminal Court of England.[2] There were especial circumstances connected with the evidence in that case which we thought rendered comment, in a journal devoted to Jurisprudence, particularly appropriate. The remarkable character, indeed, of the trial in other respects, would also have justified our notice of Palmer's trial—remarkable not only on account of the extraordinary cruelty and depravity of the accused, but as revealing to the public a startling picture of the moral condition of a considerable class in modern society—we mean that which is mainly composed of gamblers and their money-lenders—blacklegs and their victims. And now, in Scotland, the recent trial[3]

[1] Law Magazine for November, 1857, p. 67.

[2] See 5 Am. Law Reg., p. 20.

[3] The trial commenced on June 30th, and the verdict was given on July 9th—thus lasting nine working days. Palmer's trial was of twelve days' duration.

of Madeleine Hamilton Smith, on the charge of poisoning Pierre Emile L'Angelier, demands notice no less than the former, and for like reasons, viz: the nature of the evidence, as well as the strange phases of social life in these, our own times, which it presents. It is startling to find brought out, as dry matters of fact, with dates and documents in support, incidents which we meet commonly enough in a certain class of popular fiction. The thought will sometimes cross the mind, as we cogitate on this sad tale of vice and misery—how far may secret maladies like that thus exposed, pervade the social system in moral England, and (as it is, we believe, untruly vaunted) in more moral Scotland?

We have presented to us, in the history of this trial, a young girl, of a respectable family in the middle rank of life, who, judging by her letters, had received an average, though, properly speaking, not a good education; and who, living in a somewhat strict circle, happened to make the acquaintance of a young warehouseman, somewhat vain, vulgar, and vicious. She carries on a clandestine correspondence, keeps secret appointments, indulges in loose conversation with him, and, moreover, frequently seizes the time, immediately after the family devotions of the evening are over, to enjoy illicit connection with her lover. So far the story, though lamentable enough, is not marvellous or unprecedented. It is the mysterious death of the man, and perhaps the unreserved detail into which the girl enters in her letters, which has lent notoriety to the trial; and, moreover, it shocks the moral sense of the community to read how an honest suitor was on the brink of espousal with a bad woman, who, at the very time of accepting his hand, was receiving the guilty embraces of her old lover, for the treacherous purpose of luring him to destruction.

Madeleine Smith admits in her letters that she had recourse to untruth, fraud, and deception, in her difficulties; and, except that she was wretched and miserable, she certainly, one would suppose, deserved but little sympathy from society. Yet a certain portion of the Scotch public thought otherwise. One party, waving aloft the standard of Smith and Purity, would even have presented a memorial to her, and have elevated her to the dignity of a heroine,

or even a martyr; while another party, with the cry of L'Angelier and Justice, not only recklessly and indecently anticipated the verdict which should avenge his murder—but now even, impugn the propriety of the acquittal, and have further given themselves the trouble to procure and print testimonials that L'Angelier was really a nice young man, and very exemplary in his attendance at kirk.

To lawyers, the trial of Madeleine Smith, with its curious circumstantial evidence, is naturally interesting; and doubtless a story like the one we are speaking of, may also be usefully perused by all who would seek to investigate the springs of action, and trace the sources of motives and the moral necessity of events; but in this case especially, the daily and unreserved discussion, among families and in society, by the newspapers and journals, was a grave evil. That Glasgow ladies and gentlemen, young and old, should indulge in mysterious confabulations upon the subject of the charge in all its detail, may perhaps be explained on the same grounds as those which induce curious school-boys and school-girls to talk of that which they are taught it is more decent to be silent upon. We fear that the excuse which a real case afforded for conversing without delicacy as a public duty, was very readily pleaded and admitted.

One important result was obtained by this "freedom of discussion." Madeleine Smith was tried and condemned by the public from which the jury was selected, *before* she was arraigned; and it is a fact, that the members of this tribunal entering the box, not only with their own prejudices but with the knowledge of the verdict which was *expected* at their hands, were actually apprehensive, when they acquitted the prisoner, that they might, on this account, suffer violence on returning from the court through the virtuous and indignant mob. Their fear, as it turned out, was unnecessary; for we believe the sweet voices of the multitude had, during the trial, become in accordance with the verdict which was returned.

We will not conceal our opinion at the outset, that the trial of Madeleine Smith is, perhaps, the most unsatisfactory one which we know of in modern times—unsatisfactory from the beginning to the end. The mode in which evidence was sought for, produced, admitted, commented upon, and used; the whole procedure, from the

investigation by the police and magistrate to the summing up by the judge, exhibits, to our minds, a multitude of defects, which we believe our professional brethren in the North deplore, and we trust will, ere long, amend.

The "Panel" was charged with feloniously administering arsenic or other poison, on divers occasions, with intent to murder L'Angelier; and also with feloniously murdering him.[1]

[1] As our readers may like to see a specimen of the barbarous form of indictment still preserved in practice in Scotland, we will extract it. It runs thus:—

"MADELEINE SMITH or MADELEINE HAMILTON SMITH, now or lately prisoner in the prison of Glasgow, you are indicted and accused, at the instance of James Moncreiff, Esquire, Her Majesty's advocate for Her Majesty's interest: That albeit, by the laws of this and of every other well-governed realm, the wickedly and feloniously administering arsenic, or other poison, to any of the lieges with intent to murder; as also, murder, are crimes of an heinous nature, and severely punishable: YET TRUE IT IS AND OF VERITY, that you the said Madeleine Smith, or Madeleine Hamilton Smith, are guilty of the said crimes, or of one or other of them, actor, or art and part: IN SO FAR AS (1.), on the 19th or 20th day of February, 1857, (Thursday or Friday), or on one or other of the days of that month, or of January immediately preceding, or of March immediately following,* within or near the house situated in or near Blythswood square, in or near Glasgow, or situated in or near Blythswood square, and in or near Mains street, both in or near Glasgow, then occupied by James Smith, architect, your father, then residing there, and with whom you then and there resided, you the said Madeleine Smith or Madeleine Hamilton Smith did, wickedly and feloniously, administer to [or cause to be taken by] Emile L'Angelier or Pierre Emile L'Angelier, now deceased, and then or lately before in the employment of W. B. Huggins & Company, then and now or lately merchants in or near Bothwell street, in or near Glasgow, as a clerk or in some other capacity, and then or lately before lodging or residing with David Jenkins, a joiner, or with Ann Duthie or Jenkins, wife of the said David Jenkins, in or near Franklin place, in or near Glasgow, a quantity or quantities of arsenic, or other poison to the prosecutor unknown, in cocoa or in coffee, or in some other article or articles of food or drink to the prosecutor unknown, or in some other manner to the prosecutor unknown; and this you did with intent to murder the said Emile L'Angelier or Pierre Emile L'Angelier; and the said Emile L'Angelier or Pierre Emile L'Angelier, having accordingly taken the said quantity or quantities of arsenic or other poison, or part thereof, so administered [or caused to be taken] by you, did in consequence thereof, and immediately, or soon after taking the same, or part thereof, suffer severe illness: LIKEAS (2.), on the 22d or 23d day of February, 1857,

* The 19th or 20th February were the days taken by the prosecution on the trial as the proper date.

As the procedure in criminal courts in Scotlands does not admit of counsel opening his case by a statement of what he is going to

(Sunday or Monday), or on one or other of the days of that month, or of January immediately preceding, or of March immediately following, within or near the said house situated in or near Blythswood square aforesaid, or situated in or near Blythswood square, and in or near Mains street aforesaid, you the said Madeleine Smith or Madeleine Hamilton Smith did, wickedly and feloniously, administer to [or cause to be taken by] the said Emile L'Angelier or Pierre Emile L'Angelier, now deceased, a quantity or quantities of arsenic, or other poison to the prosecutor unknown, in cocoa, or in coffee, or in some other article or articles of food or drink to the prosecutor unknown, or in some other manner to the prosecutor unknown; and this you did with intent to murder the said Emile L'Angelier or Pierre Emile L'Angelier; and the said Emile L'Angelier or Pierre Emile L'Angelier, having accordingly taken the said quantity or quantities of arsenic or other poison, or part thereof, so administered [or caused to be taken] by you, did in consequence thereof, and immediately, or soon after taking the same, or part thereof, suffer severe illness: LIKEAS (3.), on the 22d or 23d day of March, 1857, (Sunday or Monday), or on one or other of the days of that month, or of February immediately preceding, or of April immediately following, within or near the said house situated in or near Blythswood square aforesaid, or situated in or near Blythswood square, and in or near Mains street aforesaid, you the said Madeleine Smith or Madeleine Hamilton Smith did, wickedly and feloniously, administer to, or cause to be taken by, the said Emile L'Angelier or Pierre Emile L'Angelier, in some article or articles of food or drink to the prosecutor unknown, or in some other manner to the prosecutor unknown, a quantity or quantities of arsenic, or other poison to the prosecutor unknown; and the said Emile L'Angelier or Pierre Emile L'Angelier, having accordingly taken the said quantity or quantities of arsenic or other poison, or part thereof, so administered, or caused to be taken by you, did in consequence thereof, and immediately, or soon after taking the same, or part thereof, suffer severe illness, and did, on the 23d day of March, 1857, or about that time, die in consequence of the said quantity or quantities of arsenic or other poison, or part thereof, having been so taken by him, and was thus murdered by you the said Madeleine Smith or Madeleine Hamilton Smith: And you the said Madeleine Smith or Madeleine Hamilton Smith having been apprehended and taken before Archibald Smith, Esquire, advocate, sheriff-substitute of Lanarkshire, did, in his presence at Glasgow, on the 31st day of March, 1857, emit and subscribe a declaration: Which declaration; As also the papers, documents, letters, envelopes, prints, likenesses or portraits, books, and articles, or one or more of them, enumerated in an inventory hereto annexed, being to be used in evidence against you the said Madeleine Smith or Madeleine Hamilton Smith at your trial, will, for that purpose, be in due time lodged in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same; ALL WHICH, or part thereof, being found proven

prove,[1] nor the circumstances under which the charge has been made, the disadvantage exists of commencing the case by calling evidence, and so the charge against Miss Smith was first told through the witnesses, which was briefly as follows:—

The prisoner had met L'Angelier (who was a native of Jersey) in 1854, the latter having procured an introduction to her privately, in the streets of Glasgow, through a lad of sixteen years of age: L'Angelier then commenced courting her. Her family disapproving of the alliance, the acquaintance was broken off, but clandestinely renewed. In the course of June, 1856, it would seem that their connection became of a very intimate description. "We should, I suppose," writes the young lady to L'Angelier, "have waited till we were married;" but they did not. And she calls herself his "wife," and the two having settled that, "before God," they were sufficiently man and wife, they continued to conduct themselves towards each other as opportunity occurred upon that assumption. Indeed, the Lord Advocate also seems to have doubted if they were not legally man and wife; and, if this were so, we may perhaps be permitted to remark that much of the moral and edifying eloquence about disgrace, sin, and degradation, the unhallowed passion, revolting scenes, social crimes, and the like, which, although having nothing to do with the charge, several functionaries were virtuous enough to indulge in, might have been omitted with advantage.

In the winter of 1856–7 a complication in the affair commences. It appears that a Mr. Minnoch commenced paying his addresses

by the verdict of an Assize, or admitted by the judicial confession of you the said Madeleine Smith or Madeleine Hamilton Smith, before the Lord Justice-General, Lord Justice-Clerk, and Lords Commissioners of Justiciary, you the said Madeleine Smith or Madeleine Hamilton Smith OUGHT to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

D. MACKENZIE, *A. D.*"

[1] The Lord-Advocate, in his address to the jury, told them that it was impossible that by listening to the scattered evidence they could have rightly appreciated the full bearing of the details of the trial, whatever may have been the general impression left on their minds. He then proceeded to try to make a chain out of a mass of disconnected links accumulated during the past week.

to Miss Smith, and on the 28th of January, 1857, made proposals of marriage to her; and, being an elegible person, he was accepted, and on the 12th of March some future day for their espousals was fixed.

Now, the theory of the prosecution is this, that when Minnoch's attention to Miss Smith assumed the positive form of an offer of marriage, the girl found herself embarrassed with L'Angelier's claims on her. She certainly tried a few days after this event to break off her connection with the latter person. He, however, had strong notions, that by marrying some person of better station than himself he should make progress in the world. He had before attempted a similar scheme with other ladies, but unsuccessfully; he therefore resisted her efforts to obtain her release, and threatened to go to her father and to show him the evidence of the relationship which existed between his daughter and L'Angelier. Whereupon the girl allows him to resume his former character of lover in ordinary, and, peace being ostensibly renewed between them, letters in affectionate terms are again written by Miss Smith to her persistent and ill-conditioned suitor, and thus the old grounds are apparently re-occupied by both parties. This occurred about the middle of February, 1856.

We shall, however, do better to take the summing up of the learned judge, in his statement of the case urged by the prosecution. He says, "The Lord Advocate states his theory of the case thus:—The panel became acquainted with L'Angelier; the acquaintance went on very rapidly, and ended in an engagement; they corresponded frequently and clandestinely; on the 6th May, 1856, he got possession of her person; the engagement was discontinued once or twiee; the family did not know of it; and the letters contined on her part in the same terms of passionate love for a very considerable time—I say passionate love, because, unhappily, they are written without any sense of decency, and in most licentious terms. After a certain time, Mr. Minnoch's attentions to the girl became very marked; she saw there was no chance of marrying L'Angelier, even if she continued to like him sufficiently; but the other was certainly a most desirable marriage for her to make. The

Lord Advocate says, that her object then was to extricate herself from the position in which she was placed; that she first makes an appeal to L'Angelier to give up her letters; she writes then very coldly, and says the attachment has ceased on her part, and she thinks on his part also; certainly there was no reason to suppose that, though he frequently blamed her conduct; but that is what she states. The Lord Advocate says, that by these cold letters she was trying to make him give her up, and to give up her letters. She failed in that. The Lord Advocate says, that then she proceeded to write in as warm terms as ever, and to talk of their embraces as she had done before. She does not succeed by that tone, and then she receives him, as he says must be inferred, and is proved, into her house for the purpose of gaining her object. She has to leave Glasgow, and he, too, has to go to Edinburgh. She returns, and she understands that he returned, and she writes letters for the purpose of having interviews with him. The Lord Advocate says, that on the former occasion, when she failed in getting the letters, out of resentment she had administered the poison to him on the 19th and 22d [February]; and, aware that no allurements, or enticements, or fascinations from her, would get the letters from him, she had prepared for the interview which she had expected on the 22d March, by another purchase of arsenic, and with the intention to poison him. The Lord Advocate's theory and statement is, that the interview having taken place, she did accordingly administer that dose of arsenic, from which, howsoever administered, he died."

The judge then proceeds to say further—"All this, on the other hand, is treated as a totally incredible supposition by the counsel for the prisoner. It is said, that she could not have had such a purpose; that it is something too monstrous to believe, or inquire into, even. Gentlemen, it is very difficult to say what might *not* occur to the exasperated feelings of a female who had been placed in the situation in which this woman was placed." (!) The judge then proceeded to say, that the correspondence was of "much importance in ascertaining what sort of feelings this girl cherished," and in enabling the jury to infer that the young woman was a foul

and determined homicide, because, having fallen into the corrupting hands of her lover before marriage, her passions had been both excited and gratified imprudently, and she had been so confiding as to write to her "husband," as she called him, in warm and unrestrained terms, which, no doubt, when they now meet the eye of others, appear licentious, immoral, and indecent. These latter remarks on the part of the Lord Justice-clerk, appear to us, we must confess, to have very little cogency, and the allusions to the "extraordinary frame of mind and unhallowed passions,"[1] resemble rather an attempt of a well-meaning man to "improve the occasion," for the moral edification of the jurymen and their daughters, than for any legitimate purpose in the administration of justice.

With respect to the three several occasions of alleged poisoning above referred to, it should be remarked that on the first occasion, viz: the 19th of February, when L'Angelier was seized with illness, although it was alleged that it arose from swallowing poison, yet the evidence offered to induce this inference was contradictory and unsatisfactory in many respects, and the hypothesis that Miss Smith had arsenic in her possession at that time was unsupported; and further it appeared that L'Angelier had been subject to attacks of illness not unlike that of the 19th February, which, as the judge remarked,[2] "appears to indicate *something internally* wrong" in the man.

[1] In the learned judge's charge on the first day (page 297), he remarked, that the correspondence was of value in ascertaining the girl's state of mind and disposition, "and whether there is any trace of moral sense or propriety to be found in her letters, or whether they do not exhibit such a degree of ill-regulated, disorderly, distempered, licentious feelings, as to show that this is a person quite capable of cherishing *any* object to avoid disgrace and exposure, and of taking any revenge which such treatment might excite in the mind of a woman driven nearly to madness, as she says she was." On the second day, happily, this reflection (which no student of mental science, much less one experienced in the history and characteristics of crime, could justify, at least from the published letters,) was modified, when, after saying that the jury must conclude, from the letters, that it was not so unlikely as was supposed that she might cherish a murderous purpose, he nevertheless warned them that it was the "*last* conclusion, of course, that you ought to come to, merely on supposition and inference and observation, upon this varying and wavering correspondence of a girl in the circumstances in which she was placed."

[2] Page 290.

With regard to the prisoner's next alleged attempt at poison, viz: that of the 22d February, there is little doubt but that L'Angelier was both very ill at that time, and that the symptoms resembled those which accompany poisonings by arsenic; and, moreover, the young lady had on the 21st bought, at a chemist's, arsenic, and *might* have been in the company of the deceased the evening before he was taken ill in this second attack.

There yet remains the third alleged attempt. Time was pressing for the girl's marriage with Minnoch. She was stoutly denying to L'Angelier that his suspicion, that she was engaged to Minnoch, was well founded, and she continued to affect to retain her ancient affection. Now, on the 16th March, it appears she was writing to her respectable lover, Mr. Minnoch, a letter, thus described in the schedule to the indictment, No. 133, "Letter to William Minnoch, Esq., posted at Stirling, 16th March, 1857." It is as follows:—

"My Dearest William,—It is but fair after your kindness to me, that I should write you a note. The day I part from friends I always feel sad; but to part from one I love—as I do you—makes me feel truly sad and dull. My only consolation is that we meet soon. To-morrow we shall be home. I do so wish you were here to-day. We might take a long walk. Our walk to Dumblane I shall ever remember with pleasure. That walk fixed a day on which we are to begin a new life—a life which, I hope, may be of happiness and long duration to both of us. My aim through life shall be to please and study you. Dear William, I must conclude, as mamma is ready to go to Stirling. I do not go with the same pleasure as I did the last time. I hope you got to town safe, and found your sisters well. Accept my warmest kindness, love, and ever believe me to be yours with affection, Madeleine."

Five days later than the date of the above note, however, viz: on the morning of Saturday, the 21st March, this treacherous correspondent posted to the other lover, the Glasgow warehouseman, L'Angelier, the following note, which probably was written on a Friday night, but it is without date:—"Why, my beloved, did you not come to me? Oh beloved are you ill? Come to me, sweet one. I waited and waited for you, but you came not. I shall wait

again to-morrow night—same hour and arrangement. Do come, sweet love! my own dear love of a sweetheart! Come beloved and clasp me to your heart. Come, and we shall be happy. A kiss, fond love. Adieu with tender embraces! Ever believe me to be your own ever dear, fond, Mini." [1]

Thus the girl was in a very considerable embarrassment with her two correspondents, and it is not clear how she could easily escape from her difficulties. Her note, just extracted, shows that she had made an appointment, and had been expecting, on the previous evening, to meet L'Angelier; and, on the day before she so expected to meet him, viz: on the 18th of the month, she certainly had bought another packet of arsenic "for the rats." The appointment thus made was not kept; but the prosecution infers that a meeting on the next day must have been kept in its stead. It is proved that on Sunday, the 22d March, at nine o'clock in the evening, L'Angelier went out of his lodgings, and with the object, it is inferred, of meeting Miss Smith; he staggers home at half-past two the next morning, and, after a few hours of agony, dies—and dies undoubtedly poisoned by arsenic. The questions then arise—First, Did Miss Smith meet the man, on the Sunday night? and second, If so, did she poison him, to get him out of the way, or for any other reason? There was no direct evidence offered in support of the affirmative of either of these questions. And it is interesting to hear how the jury were charged with respect to the circumstantial evidence adduced, and of which the above letters formed an important item.

The Lord Justice-Clerk first read the letter just extracted, and thus commented on it: "Now, it is not proved that he (L'Angelier) got any other letter.[2] He got this letter on the Sunday morning. He had complained in a letter to Miss Perry on the Friday, that he had lost an appointment which had been made for the Thursday evening, owing to not getting the note till the Friday. And that this man, ardent to see this girl again, hoping to get the satisfactory

[1] If the allegation of the prosecution was correct, the writer of the above had then already prepared some hundred of grains of arsenic, which she had *boiled down* in some *chocolate*.

[2] This is very loose. There was no evidence that he did *not* get any other letter.

answer which she had promised to give to his questions, as to forming an engagement with Minnoch, should hurry home on the Sunday night, and go out from his lodgings in the hope that he would find her waiting, and that there was the greatest probability of his seeing her, was, he thought, the only conclusion they could come to upon the matter. L'Angelier goes out apparently as soon as he changed his coat, and makes some arrangements about tea or something else, and it was for the jury to say whether they doubted that that letter brought L'Angelier into Glasgow on that Sunday night, taking the mail train, and walking to Coatbridge; but here the proof stopped." Or, in other words, there was no proof at all. The repeated laborings on this head amount to this: The girl made an appointment (by a letter, which is lost) for a certain Thursday—which the man did not keep; but she says she waited on this occasion for him even on the next day (Friday). She writes again another note, suggesting (it must be assumed) a certain Saturday for another appointment—and this also was not kept. It is therefore to be inferred that she must have, as before, waited for him the next day, Sunday, and so must have met him! It is worth while to extract this part of the learned judge's charge to the jury. "Well, then, that letter brought him to town. I think, upon the evidence that I have read to you, that there can be no doubt of that. *It is the conviction which flashed on Stevenson's* (a witness) *mind the moment the letter was found.* In the ordinary matters of life, when you find the man came to town for the purpose of getting a meeting, you may come to the conclusion that they did meet;[1] but, observe, that becomes a very serious inference, indeed, to draw in a case where you are led to suppose that there was an administration of poison, and death resulting therefrom. It may be a very natural inference, *looking at the thing morally.*[2] None of you can doubt that she waited for him again, and if she waited the second night after her first letter, it was not surprising that she should look out for an interview on the second night after the second letter." At

[1] Surely this is rather too general a proposition. Occasionally, we think, people try to meet, and don't succeed.

[2] Sic.

this point the counsel for the defence could contain himself no longer, and he begged to demur, urging that this was "the turning-point of the case." "She says," nevertheless, continued the learned judge, "'I shall wait again to-morrow night, same hour and arrangement,' and I say there is no doubt—but it is a matter for the jury to consider—that after writing this letter he might expect she would wait another night; that is the observation I made, and therefore it was very natural that he should go to see her *that* Sunday night. But, as I said to you, this is an inference only . . . . But, then, gentlemen, in drawing an inference, you *must always look to the important character* of the inference which you are asked to draw. If this had been an appointment about business, and you found that a man came to Glasgow for the purpose of seeing another upon business, and that he went out for that purpose, having no other object in coming to Glasgow, you would probably scout the notion of the person whom he had gone to meet, saying I never saw or heard of him that day; but the inference which you are asked to draw is this, namely, that they met upon that night, where the fact of their meeting is the foundation of a charge of murder. You must feel, therefore, that the drawing of an inference in the ordinary matters of civil business, or in the actual intercourse of mutual friends, is one thing; and the inference from the fact that he came to Glasgow, that they did meet, and that therefore the poison was administered to him by her at that time, is another, and a most enormous jump in the category of inferences. Now the question for you to put to yourselves is this—Can you now, with satisfaction to your minds, come to the conclusion that they did meet on that occasion, the *result being*, and the *object* of *coming* to that conclusion being, to fix down upon her the administration of the arsenic by which he died?"

Now the above extract, in addition to its remarkable inaccuracy in its terms and confused expressions, is a very startling statement as to the law of inference; and occurring, as it does, in the well-considered address of the Lord Justice-Clerk, who "favored the reporter by revising his charge to the jury, as well as his opinions

on the various points of law arising in the course of the trial,"[1] it demands a little consideration. It leads one to conclude that it was laid down that a different kind of probability is requisite in a serious case than in one of minor importance, and the laws of evidence on civil and criminal questions are at variance. Indeed it goes further, and if the last sentence is actually the doctrine laid down, then it follows, that if in any case the penalty upon conviction be capital, then a peculiar standard of probability is to be insisted on. Thus, an inference which it is righteous to draw on a trial for burglary, would be rash on a charge of manslaughter; and a pickpocket may be properly convicted upon a class of evidence which would admit of the acquittal of a sheep-stealer; or, to take the very case of Miss Smith, if she had been on her trial for taking the watch of L'Angelier, of the value of five pounds, or a question had been raised as to any supposed mercantile contract with her, the evidence before the jury was strong enough, "*morally*," to have enabled the jury to infer that these two individuals had met; but, as she was charged with poisoning him, a superior degree of proof was requisite.

Now, doubtless, with respect to high treason, there is a protective rule of law which requires two witnesses to be produced to establish the charge. Possibly, as Mr. Pitt Taylor has remarked, one reason for this may have been that the consequences of conviction, both to the accused and his family, are savage and revolting. But, he adds, a man of calm reflection may consider this an indifferent reason, "and may think that the legislature would confer no trifling benefit on the country," if it effected a reform in this antiquated fragment of the law. So, also, by the Canon law, greater accumulation of evidence is required in some cases than in others: for example, if a cardinal be charged with incontinence, the crime must be established by the evidence of *seven eye*-witnesses. But even in these absurd instances, although a greater quantity of evidence is demanded, the same quality suffices. And in every system of jurisprudence worthy the name, a different mode of logic or calculation for deciding a civil question which concerns £10,000, is not adopted

[1] See Mr. Irvine's Preface-Note to the Report.

to that which is employed to determine a matter which relates to £5.

The moral consequences of an opinion should not regulate a sensible man in determining the principles upon which he should or should not adopt or hold it, and the opposite doctrine is pregnant with mischief. It is true that most prudent men walk on a terrace raised twelve inches above the level of a lawn, and move on a path of the same width, but hanging over a precipice some thousands of feet deep, with a different kind of feeling; yet in the latter case the principles of dynamics are not altered, the law of gravity remains uninterfered with, and the identical means of locomotion are observed as on the former feat. What, however, the adventurous pedestrian, who is running the greater risk, does, is this: he tests each step more accurately than when strolling below; he is more careful in the application of the known principles of walking; he is more on his guard against making a careless movement, or forgetting to put out his proper forces, or directing his muscles in their due exercise,—he is, in one word, more anxious to apply aright the ordinary means of safe walking in the one case than in the other. If he cannot do this, he should not voluntarily attempt a giddy height. On the other hand, if circumstances compel him to do so, he will probably be crushed if he invent for the occasion a *pas seul* founded on a new principle of gravitation, which he hopes may afford him perfect security. Every prisoner ought to be tried on the same principle, and a Scotch jury ought not to be told to infer that an urchin robbed a till of sixpence on any but sufficient grounds, nor to acquit a Madeleine Smith because the evidence from which they have to draw their inference was not *more* than sufficient.

To return to the facts of the trial before us. The proof of the dates of the various letters which were given in evidence caused great trouble to the Court, and was inconclusive, too. But the most important struggle upon the admissibility of documents was that which related to the admissibility of some pencil memoranda, made from time to time in a note-book by the deceased. We will here follow the report of the judicial decision:

"The Lord Justice-Clerk said: 'The point which now awaits the

decision of the Court has been the subject of much deliberation among ourselves. Indeed I do not know that any point of greater importance ever occurred in any criminal trial, and the court are in this unfortunate position in one respect, that they have no assistance from any authorities whatever. The admission of hearsay evidence (that is, the testimony on oath of what a deceased person said,) is an established rule in the law of Scotland, but under those restrictions and conditions which I had occasion fully to state in the case of *Gordon*[1]—restrictions and conditions which go in many circumstances to the entire rejection of the evidence, and are not merely objections to its weight and credibility. What is now proposed to be admitted is this—certain memoranda or jottings by the deceased, in which certain things are said to have occurred which go directly to the vital part of this charge. The Dean of Faculty felt that so strongly, that he did not scruple to state what the purport of one of these was, in order to show the immense materiality of the point. It is sometimes a very difficult, but it is a sacred duty, for the Court to take care that the rules of evidence are not relaxed, merely because it appears that the matter tendered is of the highest importance in the case. Before evidence can be received and allowed to go to a jury, it must be shown that such evidence is legally competent. It will not do to take any half view if the evidence is not legally admissible against the prisoner, such as that the evidence should go to the jury for them to consider its importance. The evidence ought not to be admitted at all unless it is *legally* competent and admissible evidence. This important rule is sometimes touched upon when it is said that it ought at least to go to the jury for them to consider its value. This is quite incorrect. We must consider whether the evidence is competent. That is the rule also in civil cases, as is well illustrated by a case of *Muir*, tried at Glasgow by Lord Fullerton. He had allowed a letter from a person alive, but examined, to be read as evidence of the facts therein stated, saying that the jury would consider whether the letter was

[1] See Gordon *vs.* Grant (Division of Commonty of Corennie), Court of Session (Second Division), Nov. 12, 1850, xiii. D. B. M., p. 1.

sufficient evidence of such facts. In his charge he felt the embarrassment he was in. The result was, the court granted a new trial. In the ordinary case of hearsay evidence, you have, in the testimony of the witnesses examined, evidence as to all the circumstances in which the deceased's statements were made—whether seriously made or casually stated—whether any motive appeared to be influencing him—whether in answer to questions, and if so, with what purpose the questions were put; in short, imperfect as the evidence is, one can really apply to it many tests which diminish the risk of error, and by means of which, no doubt, important evidence is often obtained. Of course I am speaking now of statements by the deceased, which are not part of the *res gestæ* of the crime or transaction. We have no such means of testing the evidence now tendered—viz., entries or jottings by the deceased, of meetings with the panel, or of facts following such meetings, made in pencil, and so short as to leave their meaning unexplained or doubtful. It is of vital importance, in considering whether this evidence is admissible, to ascertain in what circumstances, and, if possible, from what motive and at what period these entries were made. Now, it is a most remarkable fact, that there is no entry regarding the prisoner, or any circumstances connected with the prisoner, or indeed any entry at all as to anything, before the 11th of February; and at that very time the purpose on her part of breaking off the engagement with him, and of demanding back her letters, had been communicated to the deceased; and his purpose and resolution not to give up the letters, and to keep her to her engagement, were avowed and made known, as it appeared from the evidence, prior to that date. Therefore he had a purpose in writing these memoranda—a purpose, obviously, to endeavour to strengthen his hold over the prisoner, not only by refusing to give up the letters at that time and afterwards, but probably with a view to hold out that he had a diary as to their interviews and communications, so as to endeavour to effect his object of preventing the marriage, and of terrifying her into giving up her engagement, with Mr. Minnoch. I make this observation, not merely with regard to the weight and credibility of these entries, but also as of

importance in regard to their admissibility, because in the case of hearsay evidence one can ascertain from the witnesses the time when the statement was made, all the circumstances and all the apparent motives which can be collected, as to the statement being made by the deceased. But when we cannot know with certainty the motive with which the man made the entry, or, perhaps, as in this case, can perceive reasons why he made the entry as against her, intending to prejudice her in one way, not of course with reference to the prospect of such a trial as this, but with reference to her engagement, I think it cannot be said that this comes before the court as a statement recorded by him as to indifferent matters, or as to matters in which he might have not had a strong purpose in making the statement. Further, it is a record of a past act. But suppose that a man has entered in his diary—and the point is, whether such an entry is *legal* evidence of what did occur—that he had arranged to meet A. B. at such a place, and he is there found murdered, that is a future thing; and I do not say that would not be admissible in evidence, leaving its effect to the jury. I feel the force of what the Lord-Advocate has so forcibly stated, that supposing in this book there had been an entry that this man purchased arsenic, would not that have been available in favor of the prisoner? But I think that a sound distinction can be drawn between that case and the present. An illustration of this point has been suggested to my mind by one of my brethren, whose authority and experience are of the very highest: Take an action of divorce against the wife where the paramour was dead; would an entry in any diary of his, that he had enjoyed the embraces of this woman in her husband's absence on such a night, be proof against the wife? I think not. What is proposed in this case is to tender in evidence a thing altogether unprecedented according to the research of the bar and bench, of which no trace or indication occurs in any book whatever—viz., that a memorandum made by the deceased shall be legal proof of a fact against the panel in a charge of murder. It is no answer to say that it may not be *sufficient* proof, but still should go to the jury: The first point is—whether it is *legal* evidence. I am unable to admit such evidence;

it might relax the sacred rules of evidence to an extent that the mind could hardly contemplate. One cannot tell how many documents might exist and be found in the repositories of a deceased person; a man may have threatened another, he may have hatred against him, and be determined to revenge himself, and what entries may he not make in a diary for this purpose? As the point is perfectly new, and as it would be a departure from what I consider to be an important principle in the administration of justice, I think this evidence cannot be received.'

"Lord Handyside said—'We are asked to receive as evidence for the Crown a pocket-book containing an almanac or diary for 1857, in which certain entries are made, opposite to certain days of the week, from February 11 to March 14. I mention these extreme dates, first, because they include the period of the only entries in the diary—the entries not beginning with the commencement of the year; and, second, because the period during which the entries are made has reference only to the first and second charges in the indictment. The third charge as to time, is subsequent to the entries ceasing to be made. The special point is, whether the entries of certain dates—two in number—are to be read, and made evidence for the prosecution, as regards the first and second charges in the indictment? The whole of the entries have been written with a lead pencil. I notice this to make the observation, that ink and penmanship afford to a certain degree a means of ascertaining whether entries are made *de die in diem*, thus having the character of entries made daily; or, on the contrary, of several entries having the appearance, by change of ink or of pen, of being made at one time, and so from after recollection. Where all the entries are in pencil, there can be no security as to the time when the entries are, in point of fact, inserted, and that they are not *ex post facto;* or that the original entries have not been expunged, and others substituted in their place—whether this be in correction of memory, or with purpose and design of another character. The parties making such entries in pencil has entire power over what he has done or chooses to do. But, waiving this peculiarity in the present case, the general point is presented for

determination, whether memorandums of a deceased person, setting forth incidents as having occurred of particular dates, and connected with the name of an individual, are admissible as evidence to support a charge in a criminal case? So far as my knowledge goes, this is a new point. We have received no assistance from the bar by reference to any authority either direct or illustrative. No case has been cited to us bearing upon the subject. And having taken some pains myself to search for authority and precedent, I have been unsuccessful in finding either to guide us. If the fact be so, undoubtedly it is a circumstance on which the objector to the admission of the evidence is entitled to found, as shifting from him to the prosecutor, the burden of showing that such evidence ought to be received. I think the question is one of great difficulty—at least I have found it to be so. Had the writer of the memorandums been living, they could not have been made evidence—of themselves they were nothing. They might have been used in the witness-box to refresh the memory, but the evidence would still be parol. What would be regarded would be the oath of the witness to facts, time, and person; and if distinct and explicit, though resting on memory alone, the law of evidence would be satisfied, irrespective of any aid by memorandums or letters, though made at the time. It is the oath of the witness to the verity of his oral statement in the box which the law requires and regards. But if the writer has died, is this circumstance to make such memorandums thenceforward admissible as evidence by their own weight? Are they, the handwriting being proved, to be treated as written evidence? That would be a bold proposition. Death cannot change the character originally impressed upon memorandums, and convert them from inadmissible into admissible writings. They are private memorandums, seen by no eye but the writers; as such, subject to no check upon the accuracy of their statements, whether arising from innocent mistakes or from prejudice or passing feeling. I do not say that they are to be supposed to be false and dishonest, for the idea is repugnant from the consideration that it would be idle to falsify and invent, when memorandums are intended to be kept secret by the writer. But it is quite conceivable that vanity might

lead to statements being made wholly imaginary, with a view to the subsequent exhibition of the book; and were its admissibility as evidence set up by death, it might become a fearful instrument of calumny and accusation. I speak just now of private memorandums, diaries, and journals, taken in the abstract. As to other writings of a deceased person, such as letters, I do not say these may not become admissible as evidence by reason of death, though during life they could not be used. But here the principle suggests itself, that these writings have been communicated before death to at least another person. They thus become analogous to words spoken—to representations made and conversations held—by a deceased person, the proper subject of hearsay evidence. It was contended that the principle on which hearsay evidence is admitted should extend to any thing written by a deceased person. It is assumed to be a declaration in writing of what, if spoken, would have been admissible on the testimony of the person hearing it. And on a first view it would seem that the written mode is superior to the oral, from the greater certainty that no mistake is committed as to the words actually used. But this would be a fallacious ground to rest on; for words written would require to be taken as they stand, without explanation or modification; whereas words spoken to another are subject to the further inquiry by the party addressed as to the meaning of the speaker, and to a sort of cross-examination, however imperfect, to which the hearer may put the speaker in order to a better or thorough understanding of the subject of communication, the object of making it, and the grounds on which the speaker's statements rest. And all these things may be brought out in the examination of the witness who comes into court to give his hearsay evidence. The value of hearsay evidence, and the weight to be given to it, comes thus to depend much on the account which the witness gives of the circumstances under which the communication was made to him—as to the seriousness of the statement, and what followed upon it in the way of inquiry and reply. Now a mere writing, in the way of memorandum or entry in a book, in the sole custody of the writer till his death, can be subject to no such tests. Its very nature shows that it is not intended for com-

munication. It may be an idle, purposeless piece of writing; or it may be a record of unfounded suspicions and malicious charges, treasured up by hostile and malignant feelings in a moody, spiteful mind. These views impress me strongly with the danger of admitting a private journal or diary as evidence to support a criminal charge. I think the question now before us must be decided as a general point. As such I take it up. If I were to confine myself to the special and peculiar circumstances of this case, I should see much perhaps to vindicate the court in the reception of the evidence tendered. There is to be found in the letters which have been already made evidence much to give corroboration or verification to some at least of the entries in the pocket-book. But I feel compelled to close my mind against such considerations, and to look above all to a general, and, therefore, safe rule, by which to be guided. I have come, therefore, to be of opinion, that the production tendered as evidence in the case in support, as I take it, of the first and second charges, ought to be rejected.'

"Lord Ivory said—'The opinion which has just been given had relieved his mind of a burden of responsibility under which he had labored, and which he was ill-able to bear. He had given the most anxious, serious, and repeated consideration to this matter. He had found little or nothing in the way of authority, and no *dicta* so precisely bearing on this case as to be of any avail. But, judging in the abstract, applying the rules as applied to other cases, endeavoring to find a principle by comparison of the different classes and categories into which evidence had been distributed, and in which evidence had been received, he felt himself totally unable to come to a conclusion that the evidence of this document should be excluded from the jury. As his opinion could not in the least degree influence the judgment, he should be sorry to add any thing that should even seem to be intended to detract from the authority of that judgment now given; least of all should he be disposed to follow such a course in a capital case, where the judgment was in favor of the prisoner; he would content himself therefore, with simply expressing his opinion. It appeared to him that this document should have been admitted *valeat quantum*, and that the jury should have considered its weight, and credibility, and value.'"

This note-book then, after much debate and delay, was eventually, by the majority of votes, *not* put in evidence. According to English notions of rules of evidence, its being proposed so to offer it was a most monstrous suggestion, repugnant to every sound principle. A great amount of other testimony, however, was accepted, which ought to have been rejected. For example, we might refer to the evidence of Miss Mary Perry, a middle-aged lady, who was a common friend of L'Angelier and Miss Smith, and who, having been mixed up with their clandestine love affairs, was called on to narrate all kinds of desultory conversations which she had held with L'Angelier alone, upon the subject of his health, his being poisoned, and Miss Smith.

We have not space here to give specimens of this evidence; but the reader will find some flagrant examples of all that evidence ought not to be, at pages 107 to 111 of Mr. Irvine's report.

The example above alluded to, of the worst and loosest of lose repetitions of hearsay—impressions of conversations—what the witness understood the deceased had said—is bad enough; but it has yet, in the particular case before us, to receive an additional element of insecurity, which we will render in the language of the Lord Justice-Clerk, upon the occasion of the preliminary examination of Miss Perry being exposed. The learned judge, exclaimed: "It turns out, then, that you were examined by the prosecutor privately, with no sheriff present to restrain improper interference; and your recollection is corrected by the prosecutor's clerk—a pretty security for testimony brought out in this sort of way!" We feel inclined to add—"A pretty security for truth, with this sort of testimony!"

The rules as to hearsay evidence in England are now so well defined, as well as so elementary, that it is hardly necessary to do more than note, what appears to us on the trial, a violation of pure principle. "It is deemed," says Mr. Pitt Taylor, "that every witness should give his testimony under the sanction of an oath, or its equivalent, a solemn affirmation; and, secondly, that he should be subject to the ordeal of a cross-examination by the party against whom he is called, so that it may appear, if necessary, what were

his powers of perception—his opportunities for observation—his attentiveness in observing—the strength of his recollection—and his disposition to speak the truth." [1]

Where loose gossip is elevated to the dignity of legal evidence, and streams of mischievous and misleading talk are allowed for days to flow into the ears of the jurymen, it is of little use to tell these worthy persons that they must duly discriminate, and only attach the proper weight to what they have heard. "There must be something in all this," thinks the juryman, forgetting, how easy it is for vehement zeal, aided by violent suspicion, professional practice and legal skill, to introduce into a trial a multitude of nothings, which may bear the semblance, to unpractised minds, of being really something.[2]

It does happen, further, that there was evidence that L'Angelier was addicted to the practice of lying in different forms. He was a "vain, vaporing" person, fond of talking very freely, and with great exaggeration about himself and his doings; and several examples of his untruthfulness appear during the trial. The necessity of testing any of his statements is obvious; but he was dead, and his gossipings and vaporings at tea with a foolish old maid and her friends, were all gravely presented to the jury for their consideration.

But if some of the rules of evidence in Scotland are loose and demand reform, much of their practice is also slovenly, and requires amendment. Great importance was attached by the prosecution to the tracing and custody of certain letters, and that their dates should be rightly fixed. This it was endeavoring to do through the postmarks on the envelopes, which were in general partially obliterated. However, very great negligence and looseness of practice

[1] Taylor's Law of Evidence, p. 447, 2nd edit.; and see his Note as to Law of Scotland, in the 3rd edit., p. 448.

[2] We may here mention that the mischievous character of the Scotch rules of evidence appears, (judging from the tone of the Press) to be quite appreciated in Scotland itself. The *Courant*, for example, has ably discussed this, as well as other questions of Criminal Jurisprudence which arose on Miss Smith's trial; and a pamphlet entitled, "Who Killed L'Angelier?" being a reprint, we believe, from another Scottish paper, deserves perusal.

was permitted even in this part of the case. "As soon as these things," said the judge in summing up, "were recovered, and brought properly to the office of the Procurator-Fiscal, the letter and the envelope in which it was found, ought to have been marked by the same numbers at the time."

* * * "It was quite obvious that, after taking possession of these documents, these officers sat down at their leisure—taking a little time one day and a little time another—till about a fortnight was lost in this irregular procedure. There seemed to be a great want of superintendence on the part of the three sheriffs, as not one of them seemed to have superintended the examination of the witnesses, or the collection of these documents, which were relied upon by the Crown as most material evidence." Again, the arsenic bought by Miss Smith was mixed with different coloring matter—indigo and soot—which are also, when swallowed, discoverable in the stomach and intestines after death; but the attention of the chemists and medical men was not directed to this point by the officers of the Crown, and the experts only looked for and found arsenic in L'Angelier's intestines, and no notice was taken of any coloring matter, which might either have helped to identify the arsenic, or have disproved the hypothesis, that the poison which killed L'Angelier was from the parcels from which Miss Smith had bought her supply.

There was, indeed, as the reader will have seen, abundance of difficulties in this case. Partly, no doubt, arising from the circumstances which surrounded it; but partly, as we have shown, from the unscientific and unsatisfactory character of the evidence, and the evils which naturally followed therefrom—one of the most serious of which perhaps is, that it induces the habit among those brought up under the Scotch system of jurisprudence, to weigh loose inferences, to draw illogical conclusions, and to confound the value of a shrewd guess with satisfactory demonstration. We find, also, defects in the procedure, which deserve notice. Thus the mode in which a prisoner's declaration is attained and used against him is alien to English notions of a fair criminal trial, and the perusal of

this trial will suggest many other points which are susceptible of judicial reform, but which we cannot here discuss.

Madeleine Smith was properly enough acquitted on all the charges against her; and the question of who gave L'Angelier the poison is, as yet unanswered. The prisoner alleged that she used the arsenic for cosmetic purposes, she believing, and it is said not without reason, that it has a benefical effect on the skin, even if applied externally. The young lady with whom Miss Smith said she had, some years ago, conversed on this practice, did not recollect advising her so to use arsenic, though they had read on the subject. Upon this evidence the learned judge seems to us to have laid somewhat undue stress. This may have arisen from the witness making an extraordinary impression upon his lordship. He describes her, in his summing up to the jury, first, as a "most respectable person," which, however, seeming too cold a phrase, he corrected it immediately, and declared that "she was a very respectable lady, of *very prepossessing appearance*—married to an English solicitor." Could higher encomium be passed, or more unnecessary comment, on this bit of unimportant evidence.

If Madeleine Smith poisoned L'Angelier, it was a very foolish act, for she wanted her letters, not his life.[1] The opening of his desk on his death would have been a frightful risk for her to run, though possibly not so great a one as that which she incurred if L'Angelier disclosed her correspondence, in revenge for her jilting him. But the most difficult part of the problem was, how the arsenic could have been administered without the man's cognizance. If the gossip brought forward as evidence by the Crown is credible, L'Angelier was suspicious that he had been poisoned before—in cocoa or coffee, administered by his sweetheart; yet it was proposed, nevertheless, for our belief, that on this occasion he swallowed in cocoa (for a cup of coffee would be incapabable of holding more than twenty grains in suspension[2]) between 200 or 300 grains of gritty arsenic flavored with soot; and that he neither tasted it while drinking the nauseous

[1] This the learned Judge pointed out strongly to the jury. She was, however, a girl of great courage and much resource, and we do not know that she had no hopes of getting the letters given up to her after his death.

[2] See Dr. Penny's evidence.

draught, nor, when lying in similar agony to that he had endured before, did the suspicion of poison recur to his mind; for he said it was "the bile again."

Doubtless the theory that L'Angelier committed suicide presents difficulties also, unless he was (and it does appear whether he were or no) a very determined man indeed, and, having resolved to die, gave no information to the doctors who attended him as to the cause of his illness. The remarks, however, which emanated from the Bench on this subject were remarkably meagre and unphilosophical. The man, be it remembered, was a foreigner, of an impulsive vain character, and he often talked of committing suicide; and the learned judge's remarks upon the subject were as follows:—"The question was, whether there was any thing in the whole character of the deceased which looked like a person who was in any danger of committing suicide, *or whether he was not a man* of far *too much levity* to do so. From all they knew of him [which was very little, and that not very trustworthy], he believed he was not the man to do so. There seemed to be no reason for any depression of spirits on his part, so far as his worldly circumstances were concerned.—He had a salary of £100 a year—was better off than he had ever been in his life before, and had every reason to congratulate himself, instead of being cast down or depressed." Now, men "of levity," as well as men of gravity, do sometimes commit suicide, and it is simply begging the question to say there was no reason for the man feeling depression or vexation. This is not, in fact, the real objection to the hypothesis of suicide, which, indeed, is not an impossible one, though, as we have said, like others, involves great difficulties.

Objections likewise are very easily found to the suggestion that, in the romantic fashion of disappointed love in France, the wretched pair of lovers resolved to take poison together—and that he took his part, but she wisely prætermitted hers.

It has been also ingeniously proposed, as an explanation of L'Angelier's death, that he was habitually an arsenic-eater,[1]—he said

[1] The probable effect of the practice of eating arsenic, and some interesting points connected with the trial, will be found discussed in the little pamphlet, published at Edinburgh, by Seton and Mackensie, entitled, "Who Killed L'Angelier?"

indeed, himself, that he was accustomed to take it, that he had swallowed on this occasion too much, but the excessive quantity swallowed renders the supposition very improbable. It is possible, however, that having the poison about with him, for his usual purpose of small doses, he swallowed by mistake a large dose of arsenic powder, instead of another powder in his possession, and, indeed, a Miss Kirk, in a curious piece of evidence, leads one to suppose that he probably did buy, in a chemist's shop, a powder on the Sunday night on which he died. We do not pretend to decide what the real circumstances of the man's death may have been. Upon the evidence, as it was adduced, one supposition seems as hard to reconcile with probability as another—and we can only hope that this arises from the peculiarity of the case, and not, in a very considerable measure, from error or incapacity of those whose duty it was to have investigated the matter thoroughly.

In reviewing the proceedings of the trial of Miss Smith, we have not alluded to the conduct of the defence. The undertaking was one of no ordinary difficulty. Prejudices in the audience—the rules of procedure and principle of evidence, which we have already sufficiently commented on—were all hostile to the prisoner's interest; and there were inexplicable mysteries and suspicions enveloping the case, and less assistance than usual seems to have been rendered to the jury, as it seems to us, in elucidating them by the presiding judge. Nevertheless, the counsel for the panel, the Dean of Faculty (Mr. Inglis), appears to have performed his arduous duty with great courage, sound judgment, and striking ability. And at his hands at least, and at those of his coadjutors, his unfortunate client certainly appears to have had justice done her; and thus this remarkable trial, with all the defects and imperfections in criminal procedure which it exhibited, happily was not rendered yet more conspicuous by a verdict of "guilty," founded on mere suspicion, and, as we contend, on an untrustworthy class of testimony.

Before concluding our remarks, we may perhaps refer to the trial of Eliza Fenning, in 1815, for attempting to poison a family in Chancery Lane. The counsel for Miss Smith cited the above case as one on which the verdict had been proved by time to be wrong.

In a recent number,[1] the same case is alluded to as an example of defective circumstantial evidence, and no lawyer can have any doubt about its being a flagrant example of bad evidence, whether the prisoner were guility or no. The Rev. J. H. Gurney, a son we believe of the late Mr. Baron Gurney, has lately taken the opportunity of declaring, that the general belief that the girl was innocent, and that the real perpetrator of the crime had confessed it, is erroneous; and he has, in a letter to the *Times*, given his reasons and authorities for believing that the girl Fenning had actually confessed her guilt to a minister of religion; but, hoping that she might be reprieved or pardoned, she subsequently recanted her confession, and died denying her guilt. Whatever may have been the guilt or innocence of the accused in the case, one thing is clear, that the evidence on the trial was inadequate for her fair conviction.[2]— In Eliza Fenning's case, as Mr. Inglis said, "opinion was divided as to the propriety of the verdict, and the angry disputants wrangled over the poor girl's grave." Happily, in Madeleine Smith's case, whatever may be the present or future opinion, or whatever discoveries time may hereafter disclose, it is not over the grave of a victim that angry disputants will be able to wrangle. The administration of justice has at least escaped this slur, whether or no on account of the excellent principles on which it is founded, we may leave our legal readers to judge.

[1] Law Magazine, August, 1856, p. 354.

[2] See remarks of Mr. Best, in his Principles of Evidence, p. 289; and Mr. Wills' work on Circumstantial Evidence.